

E

359

5

\$86



Class 51

Book 5

- 51





# SPEECH

OF THE

*HON. RICHARD STOCKTON,*

DELIVERED IN THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

On the 10th December, 1814,

ON A BILL

To authorise the President of the United States to call upon the several States and Territories thereof for their respective quotas of eighty thousand four hundred and thirty Militia for the defence of the Frontiers of the United States against invasion."

---

GEORGE-TOWN :

PUBLISHED BY RICHARDS & MALLORY.

1814.

E 359

.S86

By transfer

Nov. 30, 1925

30. 11. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

## HON. R. STOCKTON'S SPEECH

MR. SPEAKER—

I have moved for the indefinite postponement of this bill, before the amendments made in the Committee of the whole House are disposed of—not with any wish to interpose artificial obstructions to its passage through the House, but to secure to myself, and to other gentlemen, the common privilege of expressing our opinions upon a great political subject—a precaution made the more necessary, by the intimations thrown out yesterday of an intention of stopping further discussion by a resort to the previous question. I can assure you, sir, that I rise to advocate this motion in no spirit of party or of opposition; but because I feel myself constrained by all the ties which bind me to my constituents and country, to make use of every exertion to prevent the passage of the bill. I know the difficulties which at this moment surround the government and the nation. I know and I feel, as sensibly as any member can feel—the *crisis*—the awful *crisis*, at which our public affairs have arrived. I know, sir, that we are engaged in a war with a powerful, irritated and revengeful enemy. Since the late dispatches from Europe have been submitted to us, I have been induced to believe that the administration could not *at this moment* make a just and honorable peace if it *were now* really disposed so to do. I admit that there is too much ground to apprehend that if this war is continued for another campaign, it will require a great exertion to maintain the just rights and integrity of the United States. I know that our trea-

sury is empty and must be filled—that our public credit is gone and must be restored—that the ranks of our army are thin and must be encreased—all this I know—and, without stopping *now* to enquire why or wherefore these things are, I am ready to act accordingly. I am willing to accept the invitation of an honorable member from Kentucky (Mr. Duval) and to sacrifice for the good of the public. I am willing at this moment to forget all that I have ever thought and believed of this terrible war—I am willing to forget the folly, the political insanity, in which it was declared—the neglect, the culpable neglect to provide the necessary means of carrying it on—the waste—the profuse and shameful waste of blood and treasure, which has marked its progress. Although every event since that fatal step was taken has confirmed me in these opinions, I am willing to forget them all, and to act as if they did not exist. I am willing to place them upon the altar of public safety, and there to immolate them. I am willing for myself to go further, and to refrain from all irritating expressions in reference to those who hold the reins of government and control the destinies of the nation. I most sincerely pray that our gloomy forebodings as to the issue of affairs in *their hands* may not be realised. That they may be able to extricate the country from the dangers which surround it, and to make a speedy, lasting and honorable peace. I have already acted in conformity with these professions, by voting during this session for every measure intended to encrease your revenues or armies, which appeared to me to be constitutional, and founded on principles of justice and equality—and I shall continue so to act. But, Mr. Speaker, there are bounds which every man of principle must observe. There are some limits, which neither arguments, difficulties, or dangers can induce me to exceed. The limits which I have prescribed to myself in providing for the exigencies of the day are just and indispensable—they are, the *constitution*; the general principles of *political expediency*;



*the eternal immutable principles of justice, equal justice*, to all the community. These principles I must and will adhere to at all hazards. To me, sir, public wants can afford no inducement to vote for an act which my best judgment informs me transcends the legitimate powers of Congress. To me, state necessity can be no plea for resorting to wild and visionary plans, which though they may be honestly intended to redeem the public credit, I conscientiously believe will sink it deeper into ruin. Nor, sir, will necessity ever induce me in the imposition of taxes to violate the great principles of justice and equality. With these exceptions I am willing to go as far as any other member in providing the proper means of defending the rights and interests of these United States. In regard to the bill now on the table, I have read it with attention, bestowing upon it all the consideration its importance demanded. I have endeavored to analyze its objects and provisions. I have listened with the most respectful attention to every thing which has been said in its favor. The result is a solemn conviction, that we have no constitutional right to pass the bill in its present shape—and that it will be destructive of the best interests of this country to enact it. Will you listen to me, Mr. Speaker, whilst I state as concisely as I can, the reasons which have induced me to form this opinion? In performing this task, I shall endeavor to adhere strictly to the bill. There are, indeed, other most important matters intimately connected with it, which, as parts of the same general plan, would be proper objects of remark; but from these I shall refrain at present—I allude particularly to the proposed draft of the Militia to fill the ranks of the regular army. On this monstrous device I shall make no remarks now. That bill may never be called up. It is already damned in public estimation, I trust that it is sleeping the sleep of death, and that it will never be roused to affright and afflict us. Mr. Speaker, there are certain general principles which lie at the bottom of this subject.

—In a *limited* government, such as that established by the Constitution of the United States, they may truly be called *fundamental*. By some they may be considered as familiar and *trite*—and by others as scarcely worthy of attention in these enlightened days. But the great men to whom we are indebted for our independence and civil institutions thought differently. *They* supposed that they were all-important. They believed that it was always necessary to bear them in mind—and advisable frequently to recur to them, to keep this government within its proper sphere, and to defend the rights and liberties of the people. One of these general principles is that the *Militia* of the several states *belongs to the people and government of the states—and not to the government of the United States*. I consider this, sir, as a proposition too clear to require illustration, or to admit of doubt. The militia consists of the whole people of a state, or rather of the whole male population capable of bearing arms; including all, of every description, avocation or age. Exemption from militia duty is a mere matter of grace. This militia, being the very people, belongs to the people, or to the state governments, for their use and protection. It was *their's* at the time of the revolution, under the *old confederation*—and when the present form of government *was adopted*. Neither the people nor their state governments have ever surrendered this their property in the militia to the general government, but have carefully kept and preserved their general dominion or control, for their own use, protection and defence. They have, it is true, granted *or lent* (if I may use such an expression) to Congress a special concurrent authority or power over the militia in certain cases; which cases are particularly *set down—guarded—limited and restricted*, as fully as the most scrupulous caution, and the use of the most apt and significant words our language affords could limit and restrict them. The people have granted to Congress a right to call forth the militia *in certain cases of necessity and emergency*

—a right to arm and organize them—and to prescribe a plan, upon which they shall be disciplined and trained. When they are called into the service of the United States (and they cannot be called unless upon the happening of one of the contingencies enumerated) they are to be under the command of the President. Hence, it follows, that the general power, authority or jurisdiction remains in the state governments. A special, qualified, limited and concurrent power is vested in Congress, to be exercised when the event happens, and in the manner pointed out, prescribed and limited in the Constitution. And hence it also follows, that this delegated power cannot be executed upon any other occasions, nor in any other ways than those prescribed by the Constitution. There is another general rule or principle of construction to which I must allude. It is, that all particular, special, limited powers, taken from or carved out of the general power, must be *construed strictly*. The general power remains in full force, unimpaired, except where it is expressly granted away, and the construction must be *on the words of the grant*, and not by recurring to the doctrine of analogy or parity of reason. This is a rule applicable to all grants of power, public or private, but it is particularly to be attended to in grants of public authority; and most of all in those solemn grants denominated Constitutions. These grants being from the people to their rulers, are always deliberately framed. They are penned with the utmost accuracy and precision of language. All powers intended *to be granted are granted*—and those not included in the terms made use of *are withheld*. This is not a mere technical rule of the schoolmen or the forum. It is founded in reason, good sense, and justice; and is all-important in the construction of constitutions. If the words of such grants are departed from, upon any pretence, what safety do they afford? If reasoning by analogy is once permitted, so that cases not enumerated but supposed to stand upon a footing in point of reason and expediency, are, by

liberal construction, held to be included in it, what security is there but the discretion of those who undertake to expound it? A constitution should be considered as a pillar of marble, not as a figure of wax; it must remain as it comes from the hand of the artist, and not be moulded by officious hands into a more convenient shape. The rule I have laid down, has been considered of sufficient importance to be engrafted into the constitution itself.—The tenth amendment, in ordaining that “*all powers not delegated by the constitution, nor prohibited by it to the states, are reserved to the states respectively and to the people,*” declares in the spirit of the rule I have stated, that all powers not granted to the Congress by the constitutional charter, remain with the people or the state governments.

Mr. Speaker, this special, limited, concurrent power over the militia, is given by the States to the Congress only in three cases—“To enforce the laws—suppress insurrections, and repel invasion.” I call it a special *concurrent power*, and it is clearly no more; for the states, notwithstanding this grant, retain the power to call forth their militia for the same or any other lawful purposes. There is, then, no grant of *absolute power even in these cases*; and the people and the state governments have not only the right of insisting upon a strict observance of the limitation; but the corresponding right to resist all encroachments upon what they have reserved unto themselves—for as it is of the very essence of a limited government to be kept within its proper orbit, so it is the unquestionable right and duty of the people to oblige those who administer it, to preserve the boundary, and to resist and repel illegal encroachments.

I consider these principles to be unquestionable. They will, I should hope, receive the assent of every gentleman of this House. Be this as it may, I flatter myself that they will stand the test of the severest scrutiny—and being established, the only question must be, whether the act now under consideration is

a proper execution of the limited authority vested in Congress, to “*call forth the militia to repel invasion.*”

In examining this question, I shall not follow the example which has been set by some of the advocates for the bill. I shall spend no time in ransacking ancient and modern history for precedents or examples of government’s asserting the right of making every man a soldier. In my opinion, it is nothing to the purpose to examine what was the law in Greece or Rome, or what has been the practice of George the third or of Bonaparte—the question is exclusively an *American* question. I shall keep it in mind, that I am in the *American Congress*, considering an *American act*, to be tested by the *American Constitution*, and shall not trouble the House in going over matters so entirely useless and inapplicable.

The bill before us is curiously framed. There is little or no coincidence between the title and the provisions of the bill; between the pretended and the real objects. But its best friends can discover only two objects apparent on its face: 1st. To call out 80,000 militia for the defence of the frontiers against invasion—or, 2ndly. To compel these 80,000 militia to furnish 40,000 regular soldiers.

Supposing these to be the real objects, and that the provisions of the bill were adapted to them, it can be easily proved that they are unauthorised by the Constitution. Let me ask, sir, what section of the Constitution empowers Congress to call forth the militia *to defend the frontiers from invasion*? None can be produced. And it never was the intention of the people to grant such a power. A power to call forth the militia to “defend the frontiers against invasion,” would be a general power to make use of the militia during a war—it would be destitute of all substantial limitation, and might be exercised without control. Such a power, not depending upon notorious fact, would include in it a right to order out the militia for the common purposes of war—when, and where, and for as long a

time, as Congress should see fit. If Congress may call them forth for the general purpose of defence, who is to judge—who but itself can judge of the necessity and propriety of the call? Such a power would necessarily destroy those limitations so carefully provided, and place the whole militia of the United States under the control of the General Government for the general purposes of war. They might be marched from the seaboard to the North-Western frontier, and there be kept during a war, doing duty as garrison soldiers—or, in other words, as regular soldiers, under the pretext, that they were called forth to defend the frontiers. Indeed I can see no reason why, if this construction is correct, they may not be marched to those remote regions *before the war is actually* declared: or why they may not be kept there until it ended. If the power be that of employing the militia for the GENERAL purposes of defence, where is the necessity of waiting until the war is actually declared? Surely, a prudent government would not wait till that event took place, before it provided the means of defence. A wise government intending to wage a war would be so provident as at least to place its frontiers in a state of defence, before it drew the sword: and as the duty of defending the frontiers would exist as long as the war, it is manifest that if the militia could be called forth for this general purpose, they might be detained there, as long as the occasion existed; or, in other words, during the war.

But no such power is given, or was intended to be given. The power actually given to Congress is to call forth the militia *to repel invasion*—not to defend the frontiers from invasion. *The power claimed by this bill is*, that whenever Congress think an invasion probable, they may call forth the militia to defend against it.

*The power granted by the Constitution is*, that when invasion *takes place* Congress may call forth the militia *to repel it*.

These powers are not the same, but essentially

and substantially different. *The one is general*, depending for its just exercise on will and discretion. *The other is limited*, guarded by express words, and defended against perversion, by the requirement of a notorious fact, of the existence of which, the state governments are as competent to judge and decide, as the government of the United States.

*The power claimed*, in its practical operation, places the militia of the states, without limitation as to number or time of service, in the power of Congress.

*The power granted* only authorises calling them forth *on a particular emergency*, which carries with it its own limitation, both as to numbers and time of service.

*The power claimed* subjects the militia to the general duty and service of the war. It makes them, in truth, *Regulars*, though they are called militia; for the President may command them to perform every service without restriction, and at any place.

*The power granted* preserves the essential quality of being called out in aid of a regular army, upon the contemplated emergency happening, and of returning to their homes as soon as the emergency has ceased.

*The power claimed* subjects the citizen to be made a soldier without his consent, for any length of time. For, whether he shall serve one year—or two, or ten—or during a war, is admitted to be only a matter of sound discretion.

*The power granted* leaves him all his rights as a citizen—guards and protects him in the service required—calls him to arms *to repel an invader*, and as soon as he is repelled, returns the citizen to his family.

Mr. Speaker, I consider the claim now for the first time set up by the general government to the personal service of every citizen—subjecting him to be made a soldier, under the pretence of defending against invasion—and binding him to military service *whether it happens or not and after the enemy*

is expelled, as entirely unwarranted, whether we regard the words of the constitutional grant, or the manifest intention of its makers. The people have never vested such a power in Congress—they have reserved it to themselves—or it is deposited, together with the general mass of sovereignty, in the state governments.

The noxious illegal character of this bill is not at all taken away or altered by the amendment made in committee, requiring only a service of one year instead of two. It is true that it alleviates its harshness. It will be less oppressive. It may be more palatable, and for that reason it may be the more dangerous. When the oppressor assumes the form of a giant he creates alarm, and will be sure to meet with due opposition. When oppression comes like a mighty flood to overwhelm the privileges of the people, they will not fail to breast the torrent with firmness and spirit. But, when he assumes a reasonable shape—a common form—when the measure carries with it the imposing pretence of public wants, or public defence—and especially, when the original plan is softened and meliorated in its application; then we are apt to comfort ourselves that it is no worse, and finally, to disregard the dangerous principle which lurks beneath.

The amendment leaves the objection to the principle of the bill in full force. Congress have it not in their power to call forth the militia for a year, a month, or a day, except *to repel invasion*, execute the laws, and suppress insurrection.

It appears to me that the power now claimed, of using the militia of the several states, for the general purposes of war, under pretext of defending the frontier from invasion. is not only unfounded, in the fair interpretation of the Constitution, by the words and evident meaning of the granting clause, but that it is inconsistent with other parts of the charter; that it reverses the whole plan or scheme of government; destroying its symmetry, and removing some of its most important balances and checks.



One principal and avowed object of the federal Constitution was, *to provide for the public defence and to take that duty from the individual states, and impose it upon the general government.* Experience, during the war of the revolution, had taught how little the state governments were to be relied on to perform this important task. It had been found that acting without obligatory union, oftentimes under the influence of narrow, interested politics, they were not to be trusted for steady efforts, proportionate to their relative ability, or to the interests which they had at stake. The People had become tired of a government of requisitions, which could not be enforced. They called for one, which, acting immediately on the population, would possess the power of securing due respect to its own constitutional demands. Hence they imposed the great duty of public defence on the general government, and furnished it with most ample means to enable it to perform the service required. They endowed it, not only with the high powers of making war and peace, but with those also of raising regular armies, and of imposing taxes. Thus it became invested with the great powers *of the sword and the purse*, of raising *men and money*, without limitation, as to number or sum; having no bounds but the public wants, *and the great principles of civil liberty.* Having thus provided and vested in the federal government, all the means requisite to the great end in view, the state governments are absolved from the general duty, and are merely required to furnish their militia *to aid in repelling an invader.* It is evident, then, to me, that the Constitution contemplated a regular army as the steady and proper means of public defence, *in time of war*; the militia as a temporary auxiliary force, to be called in aid, on emergency or sudden onset. But the plan of this bill reverses every thing. Instead of the federal government providing for the public defence, by the means surrendered to it; instead of raising armies, to defend the states, in a war declared by

itself—it calls on the states to defend the Union. The militia of the particular states must be called forth to defend the United States. The militia is converted into the principal force, the regulars into the auxiliary!

The experience of the revolution, and the paternal warnings of their illustrious Chief had further taught the People, that militia were not to be relied on in a war with a foreign power; that they were a most expensive and ineffectual force; that every principle of sound policy forbade their being called from their occupations and business, to be made soldiers; nevertheless, their usefulness in aiding a regular army, on sudden emergency, had oftentimes been experienced, and was well known. The plan, therefore, was to defend the country, in case of foreign war, by regulars—and to add the qualified authority, to call forth the militia, on the emergency contemplated. This was a wise and safe course, and it is folly and weakness in the extreme to attempt to alter it.

There was also a further reason for leaving the general authority over the militia in the state governments, and denying it to the general government; that *it might be a check* upon the great powers of war and peace, sword and purse, thus surrendered to the general government. The federal government *is not only a limited government*, but it is furnished with its balances and checks. It was framed upon the principle, that no set of men can be safely trusted with power, without some means, left elsewhere, to keep it within proper bounds. It was *this proud principle of jealousy of power*, wherever it might be deposited, that produced the revolution. That great event was not so much brought about by actual oppression, as by the assertion of principles which were derogatory to the rights of freemen. So thought the great men who formed and adopted this Constitution. They were high-minded *Republicans in deed*, and not merely *in name*. Their political creed was, that no set of

men were to be trusted with discretionary powers. They knew that paper limitations were useless, unless accompanied by the means of defence. Hence they denied some powers to the general, and some to the state governments. They limited others, and when they bestowed general powers on the federal head, the means of a wholesome control was left with the people, and the state governments. But these salutary principles are now out of fashion. They are either unknown, forgotten, or disregarded. The plan of the *Republican administration* has been evidently to accumulate power in the Executive branch of the government, from the President down to the lowest collector or tax gatherer. Scarcely is a bill reported upon any subject relating either to war or revenue, which does not contain some covert attack on the unquestionable rights of a free people.

It is manifest to me that the Constitution contains no grant of the militia to the federal government for the general purpose of even defensive war. When this instrument was before the people such a power as is now contended for was never attributed to it, either by its enemies or its friends. On the other hand, when the great and dangerous powers actually granted by it, such as those of making war and peace, raising armies, and imposing taxes, were objected to by honest and enlightened opposers, the answer was (and it is a sound one if the constitution is executed in its true sense and spirit) that there was a sufficient security against abuses in the habits of the people, their aversion from war, and their spirit of liberty; but especially in the state governments, and *their militia*. And I might, with perfect safety, hazard the assertion, that if the power, now contended for, to call forth the whole militia for the general purposes of war, without any regard to the constitutional limitation, or to time, or place of service, had been inserted, in plain terms in the charter, it would have been rejected.

But, Mr. Speaker, perhaps it may be demanded of me whether the militia may not be called forth until an invasion actually takes place. It may be asked, must the government wait until the enemy lands upon our shores, before it can resort to this force? Upon this point I would answer, that the act of Congress passed in 1795 to carry into effect that part of the Constitution now under consideration places this subject on its proper footing: That act authorises the President to call forth the militia in case of invasion or *imminent danger* of invasion. This in terms is an extension of the provisions of the instrument, and it certainly goes to the very verge of the Constitutional limit; but I am disposed to think that it is a sound exposition of its true intent and meaning. The words of this law, not to be found in the Constitution, are these—“*imminent danger of invasion*,” and they seem to have been carefully selected for their accuracy and precision. By *imminent danger* is meant—*impending, threatening*, danger—danger *at hand*. It does not include danger *only expected, or probable*, resulting from a general state of war. For instance; it is no such emergency as is provided for in the constitution, that we are engaged in a war with a powerful nation, and that there is a moral certainty that she will invade some part of our territory. This would induce a *provident administration* to have a good army in the field, but does not authorise ordering the militia into *actual service*. But if the President were now in possession of information, that a large expedition had been prepared for and was on its way to attack New Orleans (as we have reason to believe he is) he need not delay his call on the militia, until the enemy shall arrive, but he may lawfully call out those of the contiguous states, to meet and repel that invasion, whenever the enemy shall make his appearance. So, if a fleet should arrive at Sandy Hook, or at the capes of the Delaware; it might require a long time to enable them to get up and land their troops; still the President need not wait until

they have landed; because these are cases of invasion—or of *imminent danger of invasion* within the fair meaning of the words of the Constitution.

This statute of 1795 asserts no power to call forth the militia for the general purposes of war, or to defend the frontiers; but only to repel invasion actually made or depending. Yet this statute was drawn with the utmost care, and was doubtless intended to occupy all the ground given to the general government by the Constitution, as it was then understood. It is entitled to the utmost respect and weight, as a legislative declaration, how far this right extends, and what are its just limits.

It is not necessary to detain the House in remarking on the circumstance that the enemy are in possession of some part of the territory of the United States, as that circumstance can afford no aid to this bill; and indeed does not seem to be much relied on. None of the provisions of this bill are adapted to that case. It is not designed to enable the President to call forth the militia to expel them. The existing laws are already fully competent to this end. He may call forth the militia to repel this invasion. But the object of this bill is to form a militia armament, *not to expel those invaders*, but to *serve for one year*. The enemy is left in quiet possession of what he has taken and this army is to be raised to carry on the war as the President shall direct. It may be marched into Canada, leaving the invaders behind. But more of this hereafter.

As to the second object of this bill which is to induce this corps of 80,000 militia to furnish 40,000 regulars; to be sure it does *not figure in the title of the act*, yet it has been avowed by many gentlemen to be the real object which this bill is to attain.

I cannot avoid remarking how admirably the title of this act has been contrived, to give notice of a matter *which is not to be found in the bill*—that is, a plan to *defend the frontiers against invasion*, and to *conceal what it does contain*, an *illegal device* to compel the militia to furnish recruits for the regular

army. But surely those gentlemen who excuse themselves in voting for it, although they acknowledge that it is *no militia bill*, because it affords a prospect of supplying the ranks of the regular army; surely such gentlemen have not considered, that if Congress have no right to call for the militia as this bill does call for them, neither can it possess even a pretence of right to require them to furnish regular soldiers. The furnishing half the number of regulars is *the commutation* proposed for the militia service. *But if there is no right to require the principal duty there can be none to require the substitute.* If the *obligation* to serve in the militia as this bill requires *does not exist, the alternative ought not to exist.* This need only be stated to receive the assent of every just man in the community. Then, to demand by law what we have no right to demand—to impose on the people a burthen which we have no right to impose, and oblige them to perform it, *or to provide a substitute*, will at once give to the whole process the character of illegal compulsion. To class the militia for purposes not within our control; to require of them a service which they are not bound to perform, and then to excuse them if they will furnish half the number of regular soldiers—what is this but coercion? What is this but classing the militia, and drafting them, to furnish recruits for the regular army? It becomes *conscription*, which is nothing more than obliging men to serve in the army, or to furnish others to serve, *without their consent*, and without the authority of constitutional law.

It is conscription of the most odious character—the form and shape given to it are the most offensive that could be proposed to a free people—it is concealed and covert—it is injustice perpetrated under the pretence and color of rightful authority.

The friends of the bill are then reduced to this dilemma. If the bill is really a militia bill, it is unconstitutional and should be rejected. If it is not a militia bill (as some of the majority have contended) but the real object is to obtain recruits, it is

still more objectionable and should receive no countenance in this House.

Mr. Speaker, I shall now proceed to consider the provisions of this bill. My observations will be general. I shall not trouble the House with descending to particulars. And I cannot refrain from again remarking on the title of this bill—its deceptive form and character. It affects to inform the reader that he *may within* expect to find a plan for calling forth the militia to defend the frontiers against invasion, and yet there is not a single provision to be found in the enacting clauses adapted to such an object. The plan which the bill developes, is, to class the militia under the directions and authority of the President. They are then to be drafted. Those selected are to be organized into regiments and brigades—and are to pass at once into the United States' service. There is no provision regulating the particular service upon which they are to be employed—there is nothing to confine the service *to the constitutional emergencies—to repel invasions\*—to execute the laws or to suppress insurrections.* But the men are put under martial law, and must serve as they shall be ordered. The bill pursues no plan of a militia law heretofore passed. It has not a militia feature in it, but on the contrary prostrates at once all their rights and privileges. It may, sir, be laid down as a general proposition, that a bill professing to be a militia bill, but which disregards and destroys all the essential qualities of the militia armament—which deprives the militia-man of inherent fundamental rights—rights always acknowledged and possessed, cannot be consistent with the Constitutional powers of this government. The rights of the militia were long known, and univer-

---

\* After this speech was delivered, My Baylies of Mass. offered an amendment providing that the force to be raised by this act should not be called into actual service but for the purposes of executing the laws, suppressing insurrections or repelling invasions—but it was rejected by the majority.

sally acquiesced in, before this government acquired its qualified jurisdiction over them. They claimed and exercised these rights during the war of the revolution, and at the time of the adoption of the constitution. Congress received the powers it possesses *subject to these privileges*. They are founded in justice, and in the intrinsic nature of a force, composed of the whole body of the people. They are supported by prescription or constant usage. When I speak of militia rights I mean these: *to be called out for short periods on emergency—to be taken from places contiguous, and not to be compelled to serve elsewhere; to serve only in just rotation with others*. An act which violates all these principles may be safely called *no militia law*, but an *unconstitutional requisition*.

When the bill came to us from the Senate, the term of service required by it was two years. We have reduced it to one. The principle however is not changed. The obligation to serve is absolute—peremptory—unconditional. There is no provision limiting the service by any contingency. If the enemy in one month after this force shall be organized, should be driven to the walls of Quebec, or be besieged in Halifax, still the militia-man must be a soldier. What section of the constitution, let me ask, authorises this? What letter of that instrument enables Congress to fix any absolute time of service? There is none. The legal call is *to repel invasion*. It carries with it its own limitation. The obligation to serve lasts so long and no longer *as the particular invasion for which the service is required exists*. It is to be remarked that the act of 1795, before alluded to, contains no provision ascertaining *how long* the militia called forth to serve in the cases stated in the constitution *shall serve*—it leaves it in this respect as it ought to be left, to the *intrinsic limitation* of the granting clause. But it ordains that *they shall not* be required to serve more than three months in any one year—thereby guarding and protecting this essential quality of



militia service. This is a correct exposition of the limited constitutional grant. The words of that charter carried with them the intended limitation, and therefore it was unnecessary to insert another. But as it might so happen that invasion or one of the other exigencies might endure longer than a militia-man ought to be compelled to serve, care was taken that they should not on any pretence be required to serve for more *than three months* out of twelve.

There appears to me to exist no right to fix *the time* of service but for the purpose of establishing a day beyond *which they shall not be required to serve*. The period of service which the government may *rightfully demand* is quite another thing, and depends entirely on the exigency out of which the right to call them forth, may arise. If the call is to enforce the laws, the right to service ceases when the empire of the laws is restored. If to suppress insurrections; when the insurgents are quelled. If to repel invasion; when the invader is driven back. If prudence—if reasons of state, or alledged necessity require a longer period of service, recourse must be had to the state Legislatures. The state governments are absolute, except where they are controuled by their own constitutions. They may safely be trusted—they would co-operate with the general government in all necessary measures of defence as long as that government respected their rights and performed its relative duties.

The next characteristic privilege of the militia is to be taken *from places contiguous to that where the service* is required—and how is this to be secured? There is but one method of effecting it—adhere to the Constitution—construe it according to its words and plain intent—consider the power of Congress as a limited authority—confine the power of Congress to call forth the militia to the enumerated cases—do this, and this important privilege is secured. These are all cases of emergency. If the militia cannot be called forth until the emergency

exists, then they must necessarily be taken from the contiguous neighborhoods or states. But, as I have before stated, this bill contains no provision that the militia shall not be called into actual service until the exigencies occur; nor that they shall be called from the adjacent parts or neighboring states—but they are left in these important respects altogether in the power of the President. *The rules of martial law* will oblige them to obey. They may be marched from Maine to Louisiana. There is no limitation in regard to the place where the service is to be performed. In the bill, as it came to us, there was a section restraining the right of service to the state from whence the militia came or to the next adjoining, but this we have stricken out—thereby declaring our opinions to be, that the power is *unlimited in this particular!* and that they may rightfully be sent any where. As the bill now stands, under the specious pretext of defending the frontiers, the militia of New-Jersey may be marched to Detroit or to Maine—acting on the favorite maxim of the administration, that the United States must be defended in Canada—that the invasion of that country is a measure purely defensive, these troops may be ordered to Quebec or Montreal. And if they refuse to pass the frontiers they are called forth to defend, they may be shot as mutineers. It is nothing to the purpose to say that the President will exercise a sound discretion, and will not order these men to serve at a great distance from their homes. If the constitution has not subjected the militia to the discretion of the President, we have no right to do so by law. What a Freeman may claim as an undoubted right he ought not to be compelled to receive as a favor.

This bill also destroys the great principle of rotation—by which I mean the important privilege of every freeman, not to be subject to military service, but in a just proportion of time with other freemen of his vicinage. This appears to me to be a most important privilege. The militia consists of all the

people—the entire male population. They have their rights not only as between them and the government, but as between each man and the residue. *All* cannot be called forth at a time, or the country would become a desert. Hence the right of each man is, that he shall only be called into actual service *in just rotation* with all others. To declare by law that one class shall absolutely serve for one, two, or ten years, is entirely unjust and illegal. Substantially, it makes them regular soldiers. Suppose the war should terminate with the year—then one class will have borne the whole burthen. No such injustice takes place if we use them as militia ought to be used. If we require their services according to the intrinsic nature of the force, and as the rules of justice require, all will be right. They should be ordered out for short periods, and be often relieved during a campaign, so that no one class should be compelled to serve for a longer time than its equal tour of duty may demand. Let it not be urged that so short a service will prevent their improvement in the military art. The error is, in requiring of the militia a service to which they are incompetent, and for which they were never designed. The militia were not intended and should never be relied on to fight pitched battles with a disciplined foe. They are only calculated to serve as an irregular auxiliary force, to harass and distress the enemy, upon a sudden onset. The sooner they are brought into action after they leave their homes the better. They must have brave men to command them and be employed in a service suited to their nature and genius. In a service adapted to them they will render essential aid. *Thus employed they dare to follow wherever their officers dare to lead.* In a camp they will learn little that is good; there perhaps you may discipline select corps composed of the flower of your youth, but the militia masse will learn little else than bad habits, and to become disgusted with your service. Let us then abandon the vain expectation of compelling the mili-

tia to do the duty and supply the place of regulars. Let us respect their rights, and they will be most useful. If we trample their privileges under foot they will be less dangerous to the enemy than to their oppressors.

It is most worthy of remark that in the act of 1795, all these essential characteristics of the militia force are carefully preserved. That act provides that they shall be called from the parts most contiguous to the place of danger. That they shall not serve more than three months in any one year; and each man only in due rotation with every other able-bodied man of the battalion to which he belongs. This act is entitled as I before remarked, to the most profound respect, as a correct exposition of the constitutional powers of the federal government over the militia of the states—not only because it was enacted whilst Washington was President, and Hamilton his Counsellor. but from other circumstances. *It is a revised law*—a former act, passed in 1792, had been found defective. It was enacted at a time when the government would naturally be disposed to execute all the authority vested in it, directly after the formidable insurrection in the western counties of Pennsylvania was crushed, and when a foreign war had been recently expected. It is a precedent well worthy to be followed—but of late years its principles have been disregarded. The time of service has been doubled, by acts already passed. Now we are to quadruple it. We have rejected or disregarded its other wholesome provisions and restraints; and boldly demand an entire authority and control over the male population of the country.

But, Mr. Speaker, it is apparent to me that this bill not only destroys the characteristic principles of the militia force, but that it prostrates at once the most important personal rights of our citizens, and also of our state governments.

This bill will deprive all the citizens who shall fall under the drafts, of their dearest personal rights. You force them, against their will, to be soldiers for a

whole year. You drag them from their wives, their children, their occupations, their professions and trades. You consign them to the camp, and to the hardships and toils of a common soldier. You ruin them. Take the farmer from his plough—the tradesman from his shop—the laborer from his employment, and what but ruin can await men of moderate means and large families, depending upon daily industry for maintenance and support? When they return, at the close of the year, they will find their farms unproductive and in ruins—their customers gone—their business passed away into other hands, and their families in want. What will become of men, with small means, dependent upon daily and steady exertion? What will become of tenants who cultivate the lands of other men? Of the mechanic or laborers on whom this lot may fall? They will, I repeat it, be ruined. Besides—whilst we thus injure and destroy their families we at the same time make slaves of them. We deprive them, for a year, of the inestimable right of civil liberty. We place them under martial law—expose them to military tribunals—to ignominious punishment—perhaps to death itself, for asserting what they believe to be their unalienable right. You make them slaves to their officers, many of whom will be their inferiors in worth and standing in society—perhaps to headless boys, who having never been taught themselves to obey, are sure to be insolent and overbearing in command.

Such will be the inevitable fate of your militia soldiers, if they are to perform this cruel service.

And why are they to be thus imposed upon? Will it be any other than that it is to save the country? There is no other way, sir, to save the country by such means. The people do not require us—they will not permit us to save them. What consolation will it be to them to be saved at such a price? If this year's campaign is probably will, another year, 100,000 more may be provided. The whole country may be exposed to ruin and ruined. We to join in the opposition, or you expose them to

ought to remember that we are legislating for American freemen. We may assure ourselves, that our countrymen possess this honorable trait of character, that whilst they will be ever ready to submit to us if we are *in the right*, they will be equally on the alert to resist, if we are *in the wrong*.

This bill also attacks the rights and sovereignty of the state governments. Congress is about to usurp their undoubted rights; *to take from them their militia*. By this bill we proclaim that we *will* have their men—as many as we please—*when and where*, and for as long a time as we see fit, and for any service we see proper. Do gentlemen of the majority seriously believe that the people and the state governments will submit to this claim? Do they believe that all the states of this union will submit to this usurpation? Have you attended to the solemn and almost unanimous declaration and resolution of the Legislature of Connecticut? Have you examined the cloud arising in the West? Do you yet perceive that it is black, alarming, portentous? Do you wish to put a match to it, and to plunge the country into discord and civil war? And when the enemy is at hand? No, you do not—you cannot mean to bring about such ills; you must see the necessity of union at such a time as this.

I speak not in the language of menace. But let me entreat you to desist from this course of measures. Give up, I entreat you, all the harsh measures of this bill. Indeed you need no new act. The existing laws are sufficient for all fair purposes. Give up also, I conjure you, by the best interests of our common country—give up all the dangerous you contemplate for raising armies by conscription. Rely upon it, the people will not support you in such measures. Let me again ask you as practical men, do you seriously believe that every state of this Union will submit to your central system? Suppose that New England refuse to submit—what condition do you reduce the Middle and Southern States, which may be disposed to submit? You will either invite them, by their interests and feelings

burthens to which the others successfully object. Then they will be punished for their loyalty and devotion. Be re-assured, by me, that these measures are not required to defend the country. You have no right to defend the country by such means. Such a defence will leave it not worth defending. It is not for me to offer any advice to this majority—but listen to me, for a moment longer; hearken to my earnest entreaty; that you defend the country by constitutional means; by such means as the People have been accustomed to, and which will command public confidence and approbation—give up, I again pray you, these cruel plans of compulsory service. Be warned, in season, that if you do not, you will convulse this union to its very centre. Disguise them as you may, the People will discover the entering wedge of conscription. Let your defensive efforts be on our own soil—a few well disciplined regiments properly posted and commanded, aided by the militia will perform wonders. Remember that recently less than 1500 men have foiled and driven back with disgrace the best appointed and most numerous army that Britain has ever had in Canada. Raise armies by voluntary enlistment only. Be under no apprehension of failure. Employ every office in the recruiting service. Furnish them with money and keep them constantly supplied. The offices you hold out are abundantly sufficient to command men—if they are not, recruit them. Encourage volunteer corps; arrange your militia under the existing laws; arm them; but call them not from their homes until they are wanted. Respect their rights and interests. Amalgamate them and will by attending to their comfort and interests. Leave them to their own commanders. Interfere not with the state governments respecting their militia, but encourage them to make exertions for the common defence. Pass an act guaranteeing the pay of the militia, which may be advanced by the states. Pursue a constitutional and conciliatory course, and you may safely rely upon the strength, valor, and patriotism of the people.

LRB N 27









LIBRARY OF CONGRESS



0 011 838 659 0